

U.S. DEPARTMENT OF JUSTICE

Reference Number: 2009-1-19

Federal Catalog Number: 16.606

Federal Program Title: State Criminal Alien Assistance Program (SCAAP)

Federal Award Number and Year: 2008-AP-BX-1367; 2008

Category of Finding: Activities Allowed/Allowable Costs

State Administering Department: Department of Corrections and Rehabilitation (Corrections)

CRITERIA

TITLE 8—ALIENS AND NATIONALITY, CHAPTER 12—IMMIGRATION AND NATIONALITY, SUBCHAPTER II—IMMIGRATION, Part IV—Inspection, Apprehension, Examination, Exclusion, and Removal, Section 1231—Detention and Removal of Aliens Ordered Removed

(i) Incarceration

- (1) If the chief executive officer of a State (or if appropriate, a political subdivision of the State) exercising authority with respect to the incarceration of an undocumented criminal alien submits a written request to the Attorney General, the Attorney General shall, as determined by the Attorney General—
 - (A) Enter into a contractual arrangement which provides for compensation to the State or a political subdivision of the State, as may be appropriate, with respect to the incarceration of the undocumented criminal alien; or
 - (B) Take the undocumented criminal alien into the custody of the Federal Government and incarcerate the alien.
- (3) For purposes of this subsection, the term “undocumented criminal alien” means an alien who—
 - (B)(i) entered the United States without inspection or at any time or place other than as designated by the Attorney General;
 - (ii) was the subject of exclusion or deportation proceedings at the time he or she was taken into custody by the State or political subdivision of the State; or
 - (iii) was admitted as a nonimmigrant and at the time he or she was taken into custody by the State or a political subdivision of the State has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 1258 of this title, or to comply with the conditions of any such status.

CONDITION

Corrections submitted ineligible inmate data in its federal fiscal year 2008 application for SCAAP funding. Specifically, Corrections' application included nearly 2,000 duplicate records. Corrections stated that inmates with more than one Alien Registration Number in a valid format may have multiple records in the SCAAP application for the same incarceration period. However, according to a policy advisor from the U.S. Department of Justice, data related to a single inmate should not be submitted as multiple records with different alien numbers. Additionally, we noted that Corrections' SCAAP application included one inmate that was a U.S. citizen, and thus ineligible under SCAAP guidelines. Of the 44,760 inmate records that Corrections submitted, we selected a random sample of 29 records and reviewed these records to determine the inmates' citizenship status. For one inmate in our sample, Corrections had information from the federal government that the inmate was a naturalized U.S. citizen. Federal fiscal year 2008 SCAAP guidelines state that applicants may submit records for inmates who "[w]ere born outside of the United States or one of its territories and had no documented claim to U.S. citizenship." In addition, the guidelines state "...the inmate file reflects the jurisdiction's good faith and due diligence efforts to identify and list undocumented criminal aliens housed in its correctional facilities."

The process Corrections uses to compile the inmate data file may inappropriately include ineligible inmates. Specifically, the program Corrections utilizes to extract data from its databases may inappropriately change the birthplace from a U.S. state or territory to a foreign country for certain inmates. In addition, the program Corrections uses may inappropriately change the birthplace to "unknown" when an inmate is identified as both born in the U.S. or one of its territories and is identified as requiring notification of U.S. Immigration and Customs Enforcement prior to release. Corrections stated that because it does not receive citizenship information for all inmates and does not record citizenship information in any data system, it assumes all foreign born inmates are not U.S. citizens. By making this assumption and by making changes to birthplaces without verifying the changes are correct, Corrections risks reporting ineligible inmates in the SCAAP application. Although Corrections stated that it changed its program so that it no longer changes the birthplaces from a U.S. state or territory to a foreign country, the change occurred after it submitted its federal fiscal year 2008 SCAAP application.

QUESTIONED COSTS

Not applicable.

RECOMMENDATIONS

Corrections should seek guidance from the federal government to ensure it practices due diligence in its SCAAP application and, as necessary, develops procedures to ensure it does so. In addition, Corrections should work with U.S. Immigration and Customs Enforcement to resolve which Alien Registration Number it should use prior to submitting the SCAAP application.

DEPARTMENT'S VIEW AND CORRECTIVE ACTION PLAN

Corrections would like to thank the Bureau of State Audits for its federal compliance audit of SCAAP for the state fiscal year 2008-09. To receive SCAAP funding, Corrections submits

records of foreign-born persons in our custody to the United States Immigration and Customs Enforcement agency. During the audit period, Corrections submitted 44,760 records as part of its SCAAP application.

We agree with your recommendation that Corrections should seek guidance from the federal government to ensure we practice due diligence in our SCAAP applications. In fact, we have been working closely with the federal government, including the Policy Advisor for the Bureau of Justice Assistance mentioned in your report, and will continue to do so. We also will work with the United States Immigration and Customs Enforcement to resolve any issues involving their assignment of multiple alien numbers to our inmates, as recommended in your report. While we are confident that we have acted in good faith on this issue since we have presented those multiple alien numbers as part of a single record associated with a single individual, we will continue to work with the federal government to ensure that we are presenting our applications in a manner that complies with federal standards.

We thank you again for this report. We have used our best efforts in good faith to determine SCAAP eligibility and we will continue to work with the federal government to find ways to improve our process for doing so. We welcome your input and look forward to your future efforts to ensure Corrections' compliance with federal guidelines.